

**To: All persons seeking or receiving services from the Indiana Division of Vocational Rehabilitation Services**

I, Kenneth J. Falk, am the attorney representing the plaintiffs in a class action lawsuit entitled *Roberts v. Indiana Family and Social Services Administration*, pending in Marion County Superior Court, Room No. 12, No. 49D12-1205-MI-019254. The plaintiffs have sued the Indiana Division of Vocational Rehabilitation Services (“VRS”) claiming that VRS is violating Indiana law by using its Policy and Procedure Manual to make decisions without first going through a process called rule promulgation. VRS denies that it has violated Indiana law. The case is a class action, which means that I represent not only the two persons who filed the case, but all the people in the class as well. The class is defined as:

All persons who have pending cases seeking services, or who will seek services, from Vocational Rehabilitation Services (“VRS”), and who have had or will have adverse determinations made concerning the services, including, but not limited to, eligibility determinations, based on a policy in the DDRS-VRS Policy and Procedure Manual except insofar as the policy is identical to that in the federal Code of Federal Regulations or federal or state law.

You may be a member of this class. VRS has agreed to allow me to provide you with this notice to let you know what is going on with the case. This lawsuit does not ask for damages. We are asking that VRS take the steps necessary to promulgate its Policy and Procedure Manual into state regulations. This is a process that involves publishing the proposed regulations (also called rules) and allowing for public comment and input and ultimately approval by the Governor.

VRS has agreed to promulgate its Policy and Procedure Manual, but it is going to take some time to complete all the steps necessary under Indiana law to promulgate the manual. In the meantime, VRS is going to continue to use its Policy and Procedure Manual in certain cases to make decisions. It is VRS’s position that it must continue to use the Manual or else it will not be able to make fair and consistent decisions. VRS has agreed to promulgate the Policy and Procedure Manual although it does not agree that it is required to do this, and has not been ordered by the Court to do this.

It is our position that it is not legal for VRS to use the Manual if the provision being used is different than what is required by Indiana or federal law inasmuch as the Manual has not been promulgated. Therefore, we are providing this notice to advise you that in considering whether to appeal any decision from VRS that has gone against you you may choose to argue, in addition to any arguments that you believe you have, that the decision is based on provisions of the Policy and Procedure manual that are not properly promulgated. To appeal a decision you should follow the steps noted in the notice that you receive from VRS.

At the conclusion of the administrative appeal process you will be given notice informing you that you have the right to seek review in court. You may wish to do so. If you file a lawsuit claiming that your denial was illegal because the Policy and Procedure Manual is not promulgated the court you file in should not decide that issue because our lawsuit is pending and

you would be a class member in our litigation. If you raise other issues in the litigation it might be wise to try to have those issues decided in your favor even if the court will not determine the issue concerning the Policy and Procedure Manual.

At this point I am assuming that this case will finally be resolved once the Policy and Procedure Manual is promulgated by dismissing the case or otherwise agreeing to its conclusion because the sole purpose for the lawsuit is to get the Manual published as we believe Indiana law requires. Before we can agree to end the case, however, notice must be given to the class and the Court must determine that the settlement is fair. I will be asking as a condition of any dismissal that VRS allow persons to reapply for services if previous decisions were made using portions of the Policy and Procedure Manual that we believe should have been promulgated. I am uncertain if this will happen, but it is my intention to demand this.

As I indicate above, the Court has not ordered VRS to promulgate the Policy and Procedure Manual and it possible, although I think not likely, that VRS will change its mind. If this occurs we will push the case forward and ask the Court for an order requiring that Policy and Procedure Manual be promulgated.

**If you have any questions about promulgation and what that means for your appeal, you or your representative should contact me.**

**Do not ask any employees or representatives of FSSA or VRS about what you should do – they cannot provide you with any advice about how you should appeal a VRS decision other than by giving you the standard written notice that all persons denied VRS services will receive.**

Thank you very much.

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